IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2040 OF 2007
with
CIVIL APPLICATION NO. 5838 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A. L. DAVE

HONOURABLE MR.JUSTICE S. D. DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD.
Versus
DHARMISHTHABEN JAYANTILAL BHAVSAR & 6 Others.

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Appearance :
MS MEGHA JANI for the Appellant.
MR JV JAPEE for Respondents Nos.1 to 5.
NOTICE SERVED for Respondents Nos.6 & 7

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CORAM : HONOURABLE MR.JUSTICE A. L. DAVE

and

HONOURABLE MR.JUSTICE S. D. DAVE

Date : 20/09/2007

ORAL JUDGMENT: (Per : A. L. DAVE, J.)

1. The appellant challenges judgment and award passed by Motor Accident Claims Tribunal (Aux.), Sabarkantha, at Himatnagar, on 27.6.2006 in Motor Accident Claim Petition No.1460 of 1999, whereby the Tribunal awarded a compensation of Rs.8,90,600/- to the claimants for the accidental death of Jayantilal, who died in an accident that occurred on August 30, 1999, involving motor cycle No.GJ-9-J 8716. The deceased was travelling on the said motor cycle as a pillion rider, which was driven by original opponent No.1-Nitinkumar Chandulal Patel, present respondent No.6.

2. The award of the Tribunal is challenged on the solitary ground of adopting a higher multiplier while computing the dependency loss. A reliance is placed on decision in the case of ***Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya & Others, (2005) 6 SCC 236.***

3. Since the issue involved is very narrow, with the consent of parties, the matter is taken up for final hearing.

4. Heard learned Advocate, Ms. Anushree Kapadia, on

behalf of learned Advocate, Ms. Jani, for the appellant and learned Advocate, Ms. Ami Patel, on behalf of learned Advocate, Mr. J. V. Japee, for the opponents since Mr. Japee has filed sick note.

5. On going through the judgment, we find that the deceased was in business of ready-made garments and was running Paridhan Ready-made Store. He was also working in his family firms and an income of Rs.11,000/- per month was claimed. For proving the income, Income Tax returns were produced at Exhibits 35 and 36 and it is found that his income was assessed at Rs.87,300/- for the year 1999-00 and Rs.28,367/- for the year 2000-01. The average income was computed at Rs.4820/- by the Tribunal and considering the prospective rise in income, the income was assessed at Rs.7230/-. Deducting 1/3rd of the said amount, dependency loss was assessed at Rs.4280/- per month and annual dependency loss was assessed at Rs.57,840/-. Considering the age of the deceased to be 45 years, the Tribunal adopted a multiplier of 15 and assessed dependency loss at Rs.8,67,600/-.

6. In this regard, if the decision in the case of ***Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya (supra)*** is considered, we find that Their Lordships have considered various pronouncements and the principle behind adopting multiplier while computing damages and observed thus:-

> *"16.....The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a*

person in the age group of 60 to 70, which is the normal retirement age."

Their Lordships also observed: *"The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."*

7. Keeping the aforesaid judgment in mind and considering the multiplier adopted in the facts of that case (victim aged 38 years and multiplier adopted 12), we are of the view that the multiplier adopted by the Tribunal deserves to be modified to 12, as stated in the memo of appeal. Accordingly, the claimants would be entitled to compensation as under :-

Annual Dependency loss – Rs.57,840/- x 12	-	Rs. 6,94,080/-
Compensation under the head of Conventional Allowances	-	Rs. 20,000/-
Funeral expenses.	-	Rs. 3,000/-
Total		Rs. 7,17,080/-
Rounded off. ...		Rs. 7,17,100/-

8. The appeal, therefore, stands partly allowed. The original claimants would be entitled to a compensation of Rs.7,17,100/- with proportionate costs and interest at the rate of 7.5% from the date of Claim Petition till realisation.

9. Learned Advocate, Ms. Kapadia, states that the unchallenged amount of Rs.7,17,100/- has been deposited by the appellant before the Tribunal. The appellant shall deposit the amount of proportionate costs and interest accrued on the above amount from the date of Claim Petition till the date of deposit. Out of the total amount deposited, original claimant No.1-Dharmishthaben Jayantilal Bhavsar would be entitled to 80% and remaining claimants No.2 to 5, i.e. Kaminiben Jayantilal Bhavsar, Dimpleben Jayantilal Bhavsar, Amitkumar Jayantilal Bhavsar and Kamalkumar Jayantilal Bhavsar, respectively, would each be entitled to 5% of the deposited amount. Out of the amounts going to the share of claimants No.2 to 5, 50% would be paid to them by crossed account payee cheque and 50% of the amount would be deposited with any nationalised bank of their choice in fixed deposits initially for a period of five years, on condition that no loan shall be floated against it nor any charge or encumbrance would be created thereon.

9.1 Claimant No.1-Dharmishthaben Jayantilal Bhavsar would be entitled to 80% of the deposited amount. Out of the amount going to her share, she would be paid 30% by crossed

account payee cheque and rest of the amount would be deposited with any nationalised bank of her choice in a fixed deposit initially for a period of five years, on condition that no loan shall be floated against it nor any charge or encumbrance would be created thereon.

10. Appeal is allowed to the extent indicated above. No costs.

11. In view of the final disposal of the appeal, Civil Application No.5838 of 2007 would not survive. It shall stand disposed of accordingly. Rule is discharged with no order as to costs. Interim relief shall stand vacated.

[A. L. DAVE, J.]

[S. D. DAVE, J.]

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